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**STATE OF WISCONSIN  
Division of Hearings and Appeals**

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

**DECISION**

Case #: KIN - 206900

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**PRELIMINARY RECITALS**

Pursuant to a petition filed on November 1, 2022, under Wis. Stat. § 48.57(3m)(f), and Wis. Admin. Code § DCF 58.08(2)(b), to review a decision by the Shawano County Department of Human Services regarding Kinship Care, a hearing was held on December 22, 2022, by telephone.

The issue for determination is whether the agency correctly denied petitioner's application for Kinship Care benefits.

There appeared at that time the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

Respondent:

Department of Children and Families  
201 West Washington Avenue  
Madison, WI 53703

By: Madison McBride  
Shawano County Department of Human Services  
W7327 Anderson Avenue  
Shawano, WI 54166-3105

**ADMINISTRATIVE LAW JUDGE:**

Beth Whitaker  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # ) is a resident of Shawano County.

## DISCUSSION

The Kinship Care benefit is a public assistance payment of \$254 per month per child paid to a qualified relative to support the child. See Wis. Stat. §48.57(3m)(am) and Wis. Adm. Code §DCF 58.03(12). If the relative seeking Kinship Care is not the child's legal guardian, the conditions of eligibility criteria listed in Wis. Stat. §48.57(3m)(am) must be met. Included among those conditions is a requirement that the agency conduct a background investigation of the applicant. See Wis. Stat. §48.57(3m)(am)4.

The agency representative, McBride, did not submit any documentary evidence for hearing. This record does not contain even the notice of denial that is being appealed. The only evidence regarding the contents of the appealed decision was McBride's testimony that the denial was issued on October 21, 2022 and that the benefit was denied based on "one through five or eight through ten." She testified that one or more of these numbers refers to the requirement to be a "family member" of the child in order to receive Kinship Care. She stated that because of this criterion, the agency cannot grant kinship care, rather "the state" would have to do it. When asked who "the state" is, she stated "you."

█████ testified that he received the denial notice, not by mail, but hand delivered by █████ (last name unknown), █████ caseworker. He testified that █████ (phonetic), a detective who did some type of investigation, and █████ (phonetic), associated with Shawano County Drug Court, and █████ discussed the matter with him and told him that it shouldn't be an issue that he is not a family member since he has been part of █████ life since he was two years old. Petitioner stated he is not aware of a law or rule that would prevent him from receiving Kinship Care for █████.

A moving party generally has the burden of proof, especially in administrative proceedings. *State v. Hanson*, 295 N.W.2d 209, 98 Wis. 2d 80 (Wis. App. 1980). In a case involving an application for assistance, the applicant has the initial burden to establish he or she met the application requirements. The burden then shifts to the agency to explain why it concluded the applicant was not eligible for the requested benefits.

There is no concern that petitioner is not an appropriate placement for █████. He testified credibly that he has been part of █████ life since the child was two years old, has full custody of █████ brother, and they consider themselves family. He testified credibly that █████ has done extremely well in all regards since being placed with petitioner. The agency representative testified that she has no concerns about the placement.

The agency representative and the other people named by petitioner in his testimony led him to believe that by appealing the Kinship Care denial to the Division, he could receive an order from an Administrative Law Judge disregarding the legal criterion on which the denial was based. The agency then came to hearing with no documentary evidence whatsoever documenting its decision or explaining a basis for the decision. Further, it provide no explanation or support for its position that I can order that Kinship Care be approved in this case.

Eligibility for Kinship Care is not based on the parties' agreement that a placement is appropriate. There are legal criteria governing whether the benefit may be issued. These are set forth in Wis. Admin. Code DCF Chapter 58. The Chapter's purpose is to "establish criteria and procedures for determining initial and continuing eligibility of a relative providing care and maintenance for a child for a monthly payment to assist with the expenses involved in providing that care and maintenance and for recovering overpayments." Wis. Admin Code DCF 58.01. The Chapter is entitled "Kinship Care and Long-Term Kinship Care." The "monthly payment" referred to in DCF 58.01 is commonly known as Kinship Care.

benefits. The Kinship Care benefits governed by DCF Ch. 58, are defined by statute at Wis. Stats. 48.57(3m).

A "relative caregiver" is defined in DCF Chapter 58 as "a relative that is providing care and maintenance for a child and is applying for, or receiving, kinship care payments or long-term kinship care payments." DCF 58.02(23). A "relative" is defined as "an adult that is the child's stepparent, brother, sister, stepbrother, stepsister, half brother, half sister, brother-in-law, sister-in-law, first cousin, second cousin, nephew, niece, uncle, aunt, step uncle, step aunt, or any person of a preceding generation as denoted by the prefix of grand, great or great-great, whether by blood, marriage or legal adoption, or the spouse of any person named in this subsection, even if the marriage is terminated by death or divorce." Wis. Admin. Code DCF 58.02(22).

Petitioner testified that he was not a blood relative of the child for whom he requested Kinship Care. This is not disputed. Petitioner is the father of the child's brother. That relationship is not listed as a "relative" in DCF 58.02(22). There is no evidence in this record that any of the numerous relative types listed in the definition apply to him or that by any analysis petitioner is a relative for purposes of Kinship Care, as defined in DCF 58.02(22). Because he is not a relative, he is not a relative caregiver. Wis. Stats. Chapter 48 defines the term "Kinship Care relative" as a "relative other than a parent." Wis. Stats. Sec. 48.57(3m) but does not provide any definition of "relative" that is different from or broader than the definition in the Administrative Rules, that could possibly include this petitioner.

I am required to apply relevant law to the facts presented at hearing. The agency's failure to present evidence or legal authority at hearing does not eliminate the requirement that I base my decision on Kinship Care law. Even without any evidence from the agency representative showing that the agency had a legal basis for the denial, I am required, based on this record and applicable law, to find that they did, because petitioner does not meet the legal definition of "relative caregiver" and therefore is ineligible for Kinship Care.

I have no authority to place the burden of proof on the agency, even if it seems unfair that the agency could present no evidence at hearing and still prevail. It seems unfair that the agency representatives encouraged petitioner to appeal their denial and incorrectly led him to believe that the Division has the authority to grant Kinship Care under these facts. Further, it may seem unfair to petitioner that he is an appropriate and even ideal caregiver for the child and has demonstrated that, but cannot get Kinship Care. However, I am not allowed to disregard the law and make a decision based on my opinion, or anyone else's, about whether it would be good for petitioner to have Kinship Care benefits or whether the legal definition of "relative" for Kinship Care *should* include this petitioner. I must apply the actual law governing the program, whether or not I think the result is good or fair. It is the long-standing position of the Division of Hearings & Appeals that the Division's hearing examiners lack the authority to render a decision on equitable arguments. See, *Wisconsin Socialist Workers 1976 Campaign Committee v. McCann*, 433 F.Supp. 540, 545 (E.D. Wis.1977).

Caregivers must be "relative caregivers" to be eligible for Kinship Care benefits. The agency correctly denied Kinship Care benefits because petitioner is not a relative of the child [REDACTED] and therefore is not a relative caregiver. Even if he is, in every other way, a perfect caregiver for the child [REDACTED], he is not eligible for Kinship Care benefits.

### **CONCLUSIONS OF LAW**

Petitioner does not meet the legal requirements for Kinship Care benefit eligibility because he is not a relative of the child in question according to the relevant definition of "relative" in Wis. Admin. Code Chapter 58 and is therefore not a relative caregiver.

**THEREFORE, it is**

**ORDERED**

That the petition for review is dismissed.

**REQUEST FOR A REHEARING**

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 4822 Madison Yards Way, 5<sup>th</sup> Floor North, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

**APPEAL TO COURT**

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Children and Families, 201 West Washington Avenue, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

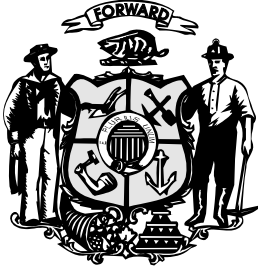
The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,  
Wisconsin, this 7th day of February, 2023



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Beth Whitaker  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

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The preceding decision was sent to the following parties on February 7, 2023.

Shawano County Department of Human Services  
DCF - Kinship Care, Balance of State  
DCF - Kinship Care, Milwaukee